Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

JOHN SALVADOR, JR. and
KATHLEEN A. SALVADOR,
Petitioners,

v.

THE LAKE GEORGE PARK COMMISSION; *et al.*,
Respondents.

and another action

JOHN SALVADOR, JR. and
KATHLEEN A. SALVADOR,
Petitioners,

v.

THE LAKE GEORGE PARK COMMISSION; *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
NEW YORK STATE COURT OF APPEALS

APPENDIX

MADELINE SHEILA GALVIN
Counsel of Record
c/o Galvin and Morgan
217 Delaware Avenue
Delmar, New York 12054
(518) 439-7734
Attorneys for Petitioners

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State of New York
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-sixth day of October, 2010

Present, Hon. Jonathon Lippman, Chief Judge, Presiding.

Mo. No. 2010-991
Lake George Park Commission,
Respondent,
v.
John Salvador, Jr., et al.,
Appellants.
(And another action.)

A motion for leave to appeal to the Court of Appeals in the above causes having heretofore been made upon the part of the appellants herein, papers having been submitted thereon and due deliberation having been thereupon had, it is,

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/
Stuart M. Cohen
Clerk of the Court

State of New York
Supreme Court,
Appellate Division
Third Judicial Department

Decided and Entered:
June 28, 2010

LAKE GEORGE PARK COMMISSION,
Respondent,

DECISION AND
ORDER ON
MOTION

v

JOHN SALVADOR JR. et al., Individually and as the owners, Officers and Managers of DUNHAM'S RESORT CORPORATION, doing Business as DUNHAM'S BAY LODGE, INC. and/or DUNHAM'S BAY BOAT and BEACH CLUB, INC., et al.,
Appellants.

Motion for relief from judgment or order under CPLR 5015 or, in the alternative, for permission to appeal to the Court of Appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

CARDONA, P.J., LAHTINEN, MALONE JR., STEIN and GARRY, JJ., concur.

ENTER:

/S/
Michael J. Novack
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

LAKE GEORGE PARK COMMISSION,

NOTICE OF ENTRY

Respondent,

Case No. 506034
Warren County
Index No. 37573

-against-

JOHN SALVADOR, JR., et al., Individually and as the Owners, Officers and Managers of DUNHAM"S RESORT CORPORATION.,doing business as DUNHAM'S BAY LODGE, INC., and/or DUNHAM'S BAY BOAT and BEACH CLUB, INC., et al.,

Appellants.

PLEASE TAKE NOTICE that the Memorandum and Order of the State of New York Supreme Court, Appellate Division, Third Judicial Department in the above captioned appeal, a copy of which is attached hereto, was entered on April 8, 2010.

Dated: April 9, 2010

To: Madeline Sheila Galvin
Galvin and Morgan
217 Delaware Avenue
Delmar, New York 12054

Andrew M. Cuomo
Attorney General of the
State of the New York
Attorney for the Respondents

/s/_____
by: Lawrence A. Rappoport,
Associate Attorney
New York State Department
of Law
The Capitol
Albany, New York 12224

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered:
April 8, 2010

LAKE GEORGE PARK COMMISSION,

506034
MEMORANDUM AND ORDER

Respondent,

v

JOHN SALVADOR, JR., et al., Individually and as the Owners, Officers and Managers of DUNHAM'S RESORT CORPORATION, doing Business as DUNHAM'S BAY LODGE, INC. and/or DUNHAM'S BAY BOAT and BEACH CLUB, INC., et al.,

Appellants.

Calendar Date:
February 18, 2010

Before: Cardona, PJ.,Lahtinen, Malone Jr., Stein and Garry, JJ.

Galvin and Morgan, Delmar
(Madeline Sheila Galvin of Counsel), for Appellants.

Andrew M. Cuomo, Attorney General, Albany (Lawrence A. Rappoport of Counsel), for Respondent.

Lahtinen, J.

Appeals (1) from an order of the Supreme Court (Aulisi, J.) entered November 26, 2008 in Warren County, which assessed civil penalties against defendants upon a prior order of said court, and (2) from the judgment entered thereon.

Defendants have owned and operated a marina on Lake George in the Town of Queensbury, Warren County for many years.[1] The marina had been operated under a 1982 permit issued by the Department of Environmental Conservation (hereinafter DEC). When governmental oversight of marinas on Lake George was transferred from DEC to plaintiff in the late 1980's, a series of disagreements between defendants and plaintiffs ensued. In earlier appeals, we upheld plaintiff's general regulatory authority (Matter of Salvador v. State of New York, 205 AD2d 194 [1994], appeal dismissed 85 NY2d 857 [1995], lv denied 85 NY2d [1995]), as well as specific regulations and fees as applied to defendants' marina including, as currently relevant, that a permit was required before extending their docks by six feet (Lake George Park Commn. v. Salvador, 245 AD2d 605

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[1] Defendant William Robinson, individually and doing business as Lakeside Boat Rentals, is not an owner of the marina and the claims against him were severed by the Supreme Court in February 2007.

[1997], lv dismissed and denied 91 NY2d 939 [1998]).

Although plaintiff had obtained regulatory oversight by 1988, it did not require defendants to apply for a new marina permit until 1996. Discussions regarding the marina permit were ongoing for well over a year, with defendants seeking to include the six-foot extensions they had made to their docks without a permit and add rentals of personal watercraft (commonly known as a jet ski). When plaintiff did not agree to these uses, defendants withdrew their permit application in September 1998 and took the position that they would simply continue to operate their marina under the 1982 DEC permit. Defendants refused to remove the extended docks, entered into an agreement allowing defendant William Robinson to run a personal watercraft rental business at the marina, and began construction of a boat ramp without obtaining a permit from plaintiff despite being repeatedly notified by plaintiff of the necessity of a permit.

Plaintiff commenced this action in December 1998 and, after subsequent amendment, sought to compel defendants to apply for a permit to operate the marina, direct defendants to remove the six-foot dock extensions, prevent defendants from allowing personal watercraft rentals without a permit, enjoin construction of the boat ramp, assess civil penalties and require defendants to pay various regulatory fees. There were delays in the action caused by a federal action commenced by

Defendants against plaintiff. However, in a decision dated July 21, 2004, Supreme Court denied defendants' motion to dismiss and granted plaintiff summary judgment. The Court, among other things, reinstated defendants' application for a marina permit, directed that the six-foot dock extensions be removed, enjoined rental of personal watercraft at the marina, enjoined construction of the boat ramp and stated that a civil penalty hearing would be conducted.

The penalty hearing was eventually conducted and, by decision and order entered in November 2008, Supreme Court assessed various penalties as follows: $297, 000 for operating a marina without a permit from July 26, 2004 (five days after the court's decision granting plaintiff summary judgment) until April 7, 2007; $37, 200 for failing to remove the six-foot dock extensions until May 30, 2008; $250 civil contempt for disobeying the court's order regarding the dock extensions; $5,000 for allowing personal watercraft rentals during two boating seasons; $8, 500 for construction and use of the boat ramp without a permit; and $2,027 for failure to pay regulatory fees in 1999 and 2000. Although these assessments totaled $349,477, the judgment entered on the Order was for $349, 477 reflecting a mathematical error.[2]

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[2] In modifying the judgment herein, we will correct the mathematical error (see CPLR 5019 [a]).

Defendant appeals.[3]

Initially, we find that Supreme Court properly granted plaintiff's motion for summary judgment regarding the various violations by defendants. With regard to the dock extensions, we had upheld an earlier ruling that ordered the removal of those structures (Lake George Park Commission v Salvador, 245 AD2d at 608), and defendants nevertheless failed to take such action. Defendants' effort to revisit the merits of that issue is precluded by res judicata and collateral estoppel. Plaintiff met its threshold burden on the remaining causes of action with various proof, including affidavits and documents, establishing that it had informed defendants that construction of a boat ramp required a permit and they nevertheless proceeded without one, defendants failed to pay regulatory fees in a proper fashion, defendants operated the marina without a permit issued by plaintiff, and defendants commenced and continued allowing personal watercraft rentals at their premises despite plaintiff's repeated warnings that a permit was required for such activities. Defendants failed to raise triable issues regarding

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[3] We note that, as in the other case involving these parties currently before us (Lake George Park Commn v Salvador, _ AD3d _ [decided herewith] [appeal No. 507817]), we will, as requested by defendants, take judicial notice of the record from the other appeal when considering the arguments in this appeal (see generally Oakes v Muka, 56 AD3d 1057, 1059 [2008]; Edgewater Constr Co., Inc. v 81 & 3 of Watertown, Inc., 24 Ad3d 1229, 1231 [2005]).

such conduct and the legal arguments they advanced were without merit.

We turn to Defendants' challenges to the civil penalties assessed by the Supreme Court. The amount of a civil penalty for a violation rests within the broad discretion of the court so long as the reasons for the penalty are explained and the amount is not disproportionate to the offense (see Tatta v State of New York, 20 AD3d 825, 826 [2005] lv denied 5 NY3d 716 [2005]). The maximum penalty permitted for violating statutes or regulations enforced by plaintiff is $500 for each violation and $500 for each day the violation continues (see ECL 71-3303 [1]). Supreme Court explained its reasons for each penalty and, while the total penalty was significant, it was well below the maximum available under the statute. Moreover, as noted by Supreme Court, during the time that defendants operated the marina in violation of the pertinent statutes and regulations, they were receiving gross income from the marina far exceeding the total penalties imposed. We do, however, find some errors in the calculation of the penalties that require modification.

Supreme Court explained that the $297,000 penalty for assessing a $500 daily penalty for each day of operation during a boating season from July 26, 2004 (i.e., five days after the Court's decision granting plaintiff summary judgment) until April 7, 2007 (when defendants began operating under a permit issued by plaintiff).

The Court used the 200 days from (and including) April 15 to October 31 as the length of a boating season.[4] Defendants contend that the boating season used for the penalty should be shortened to May 15 to October 15. However, there is, as urged by plaintiff, support in the record for running the daily penalty for an even longer period than used by the Supreme Court's discretion to frame the parameters of the season as it did. Accepting the court's methodology on this issue as reasonable and within its discretion, it nevertheless is apparent that a mathematical error was made. Defendants were in violation for 498 days, which, at $500 per day, calculates to $249,000. The amount assessed for operating without a permit will this be reduced from $297,000 to $249,000.

With regard to the six-foot extensions, Supreme Court assessed a penalty of 10% of the maximum daily penalty for each day those extensions remained in place during a boating season from July 26, 2004 to May 30, 2008. Supreme Court acted within its discretion and arguably showed considerable leniency in light of the fact that we had upheld in 1997 an earlier order directing removal of the six-foot extensions (Lake George Park Commn. v. Salvador, 245 AD2d at 608). Nevertheless, since the order entered on

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[4] It merits noting that plaintiff had urged running the penalty from September 23, 1998 (when defendants withdrew their permit application), and assessing the penalty year-round rather than during the boating season as used by the Supreme Court. If accepted, this could have resulted in a penalty far exceeding a million dollars

Supreme Court's July 19, 2004 decision specifically granted defendants until November 1, 2004 to remove the extensions, the commencement of the daily penalty should have been from November 1, 2004 rather than July 26, 2004. This is a period of 646 days assessed at $50 per day for a total of $32,300. Supreme Court's assessment of $37,200 will be reduced accordingly. We find defendants' remaining argument regarding the penalties unavailing.

Defendants' assertions that the penalties should have been imposed on only the corporate defendant and that plaintiff did not comply with statutory conditions when seeking a penalty in excess of $5000 are unavailing for the reasons set forth in our decision in defendants' companion appeal (Lake George Park Commn. v Salvador _ AD3d_ [decided herewith] [appeal No. 507817]). The remaining issues asserted by defendants have been considered and found unpersuasive.

Cardona, P.J, Malone Jr., Stein and Garry, JJ., concur.

ORDERED, that the order and judgment are modified, on the facts, without costs, by reducing the total penalties assessed against defendants to $297,077, and as so modified, affirmed.

ENTER:
/S/
Michael J. Novack
Clerk of the Court

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

LAKE GEORGE PARK COMMISSION,
Plaintiff-Respondent,

-against-

NOTICE OF ENTRY
AD Case No. 506034
Warren County
Index No. 37573
(Appeal No. 1)

JOHN SALVADOR, JR., and KATHLEEN A. SALVADOR, individually and as the owners, officers and managers of the DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC.; and/or DUNHAM'S BAY BOAT and BEACH CLUB, INC., and WILLIAM ROBINSON, individually and d/b/a LAKESIDE BOAT RENTALS,
Defendants-Appellants
WILLIAM ROBINSON, individually and d/b/a LAKESIDE BOAT RENTALS,
Defendant.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

LAKE GEORGE PARK COMMISSION,
Plaintiff-Respondent,

-against-

AD Case No.
Essex County
Index No. 45591
(Appeal No. 2)

JOHN SALVADOR, JR., and
KATHLEEN SALVADOR, individually, d/b/a
DUNHAM'S BAY BOAT AND BEACH CLUB, and
d/b/a DUNHAM'S BAY LODGE, and DUNHAM'S
RESORT CORP.,

Defendants-Appellants.

PLEASE TAKE NOTICE that the Decision and Order on Motion of the Appellate Division, Third Department, denying the motion for a stay of enforcement pending appeals in the above-entitled matters, a copy of which is attached hereto, was filed and entered in the Third Department County Clerk's Office on February 17, 2009.

Dated: February 18, 2009

Andrew M. Cuomo
Attorney General of the
State of New York
By: /s/
Lawrence A. Rappoport
Associate Attorney
Attorney for the Lake
George Park Commission
The Capitol
Albany, NY 12224
(518) 474-1191

To: Galvin and Morgan
217 Delaware Ave
Delmar, New York 12054

State of New York
Supreme Court
Appellate Division
Third Judicial Department

Decided and Entered:
February 17, 2009 Case # 506034

LAKE GEORGE
PARK COMMISSION,
Respondent,

DECISION AND ORDER ON MOTION

v

JOHN SALVADOR, JR., et al., doing Business as DUNHAM'S BAY BOAT AND BEACH CLUB, INC., and doing Business as DUNHAM'S BAY LODGE, et al., Appellants.

(And another related action.)

Motion for stay pending appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

PETERS, J.P., LAHTINEN, KANE, MALONE JR. AND STEIN, JJ., concur.

ENTER:
/S/
Michael J. Novack
Clerk of the Court

STATE OF NEW YORK
SUPREME COURT
COUNTY OF WARREN

LAKE GEORGE PARK COMMISSION
Plaintiff,

NOTICE OF ENTRY
Index No.37573
RJI No. 56-1-2000-0302

-against-

JOHN SALVADOR, JR. and
KATHLEEN A. SALVADOR, individually and as the owners, officers and managers of the DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC.; and/or DUNHAM'S BAY BOAT and BEACH CLUB,INC.; DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE INC.; and/or DUNHAM'S BAY BOAT and BEACH CLUB,INC.; and WILLIAM ROBINSON, individually and d/b/a LAKESIDE BOAT RENTALS,
Defendants.

PLEASE TAKE NOTICE that the Decision and Order in the above-entitled matter, signed by the Hon. Richard T. Aulisi on October 10, 2008, a copy of which is attached hereto, awarding plaintiff Lake George Park Commission a total sum of $ 349, 277.00 in civil penalties against defendants John Salvador, Jr., Kathleen A. Salvador, And Dunham's Resort Corp. (The "Salvador

defendants") and further determining the Salvador defendants to be in contempt of court and awarding the Commission an additional penalty of $250.00, was filed and entered in the Warren County Clerk's Office on November 26, 2008 and docketed as judgment pursuant to C.P.L.R § 2222 on December 4, 2008.

Dated: December 15, 2008

Andrew M. Cuomo
Attorney General of the State of New York
By:/s/
Lawrence A. Rappoport
Associate Attorney
Attorney for the Lake George
Park Commission
The Capitol
Albany, New York 12224

To: Galvin and Morgan, Esq.
217 Delaware Avenue
Delmar, New York 12054

William J. Robinson, pro se
PO Box 372
Lake George, NY 12845

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

LAKE GEORGE PARK COMMISSION,

75 Fort George Road
PO Box 749
Lake George, New York 12845

JUDGMENT

Plaintiff,

Index No. 37573
RJI: 56-1-2000-0302

-against-

JOHN SALVADOR, JR. and KATHLEEN A. SALVADOR, individually and as the owners, officers and managers of the DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC. and/or DUNHAM'S BAY BOAT and BEACH CLUB, INC.,

37 Alexy Lane
Lake George, New York 12845

And

DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC. and/or DUNHAM'S BAY BOAT AND BEACH CLUB, INC,

3000 State Route 9L
Lake George, New York 12845

Defendants.

The causes of action of plaintiff Lake George Park Commission for civil penalties against defendants in the above-entitled action having come on for trial before the Honorable Richard T. Aulisi on July 5, 23, and 27, 2007 and on March, 2008, and the Court having signed a Decision and Order on October 10, 2008, a copy of which is annexed hereto, which was entered in the Warren County Clerk's Office on November 26, 2008,

NOW, on the motion of Andrew M. Cuomo, Attorney General of the State of New York, Lawrence A. Rappoport, Associate Attorney, of counsel, it is,

ADJUDGED AND DECREED that plaintiff Lake George Park Commission shall recover from Defendants John Salvador, Jr., Kathleen A. Salvador, and Dunham's Resort Corp., the amount of $349, 277.00 in civil penalties and an additional amount of $250.00 upon the Court's determination of defendants' contempt of court, for a total sum of $349, 477, and that plaintiff Lake George Park Commission shall have execution therefore.

Judgment signed this 4th day of December, 2008.

Entered: December 4, 2008

/s/
Warren County
Clerk

STATE OF NEW YORK
SUPREME COURT
COUNTY OF WARREN

LAKE GEORGE PARK COMMISSION
Plaintiff,

DECISION AND ORDER

-against-

Index #37573

RJI No. 56-1-2000-0302

JOHN SALVADOR, JR. and KATHLEEN A. SALVADOR, individually and as the owners, officers and managers of the DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC.; d/b/a DUNHAM'S BAY BOAT and BEACH CLUB,INC.; DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE INC.; and/or DUNHAM'S BAY BOAT and BEACH CLUB,INC.; and WILLIAM ROBINSON, individually and d/b/a LAKESIDE BOAT RENTALS,
Defendants.

The parties in the above entitled matter have been participants in numerous lawsuits involving the defendant's property and/or business which are situate on the shores of Lake George in Warren County, New York. A portion of the litigation has proceeded through the Federal Court

system and other portions of the litigation have proceeded through the State Court System.

By prior Decision in this matter dated July 19, 2004, this Court found that defendants' marina property is subject to pertinent provisions of Article 43 of the New York State Environmental Conservation Law and the regulations promulgated thereunder. Accordingly, the Court granted plaintiff's cross-motion for civil penalties against the defendants for continued operation of defendants' marina without a Class "A" marina permit. Likewise, this Court granted plaintiff summary judgment on its fourth cause of action for civil penalties against the defendant for allowing rentals of personal water craft from the marina without a permit. In addition, the Court granted plaintiff summary judgment on its sixth cause of action seeking civil penalties for defendants' maintenance of unpermitted six foot extensions to 25 finger docks as well as summary judgment on plaintiff's eight cause of action for civil penalties relating to defendants' construction of a boat ramp at their marina without a permit. Finally, summary judgment was also granted to the plaintiff for civil penalties due to defendants' failure to pay plaintiff the appropriate regulatory fees in a proper and timely manner. On all such matters, the Court advised that a hearing would be scheduled to determine the amount of civil penalties to be assessed against the defendants.

With regard to the amount of the penalties, Environmental Conservation Law § 71-3303 provides as follows:

> 1. Any person who violates any provision of, or fails to perform any duty imposed by article forty-three of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the Lake George Park Commission made pursuant to article forty-three of this chapter shall be liable for a civil penalty not to exceed five hundred dollars for each such violation and an additional penalty of five hundred dollars for each day during which such violation continues, to be assessed by the Lake George Park Commission after an opportunity to be heard, or by the Court in any action or proceeding initiated by the attorney general in the name of the Lake George Park Commission. In Addition thereto, such person, may, by similar process, be enjoined from continuing such violation, and any permit or certificate issued to such person may be revoked or suspended, or a pending renewal application denied based upon such violation.

Following several days of hearings, and having given the parties the opportunity to make written submissions, the Court finds as follows:

1) With regard to the issue of operating a Class "A" marina without a permit, the Court finds that as of July 26, 2004[1], at the latest, defendants were or should have been aware that their actions were improper. It appears that defendants continued operation of their marina without a permit until one was ultimately issued by the Commission on April 7, 2007.[2] Upon review of the circumstances, including the potential income generated from the marina during such time period, the Court finds the maximum penalty to be appropriate.[3] Pursuant to New York State Environmental Conservation Law § 71-3303, the Court finds that the maximum potential penalty that could be assessed against the defendants is $492,500.00. However, although the specific dates of operation of the marina were not established for the period in

---

[1] This Court's prior Decision dated July 19, 2004, was mailed to the parties on July 21, 2004.

[2] Defendants withdrew their application for a Commission Class A marina permit on September 23, 1998, and did not resubmit an application until ordered to do so by this Court on December 23, 2006.

[3] From the defendants' income summaries submitted, it appears that the gross income from the marina during the 1998-2—6 years exceeded $1,500,000.00

question, it is apparent to the Court that the business of the defendants was seasonal in nature.

Therefore, the Court is basing the fine calculation on an annual seasonal period commencing April 15th, and termination October 31st.Accordingly, the Court finds the appropriate penalty to assessed against the defendants is $297,000.00

2) With regard to defendants' failure to remove six foot extensions on their 25 finger docks, I it appears that such extensions remained in place from September 23, 1998, until at least May 30, 2008. While certainly, each six foot extension remained in place, plaintiff requests imposition of a single daily penalty for each day that all such extensions remained in place. As was the case with defendants' operation of a marina without a permit, by July 26, 2004, at the latest, defendants were or should have been aware that their actions relating to the six foot dock extensions were improper. Using the seasonal limits established by the Court above, from July 26, 2004, until May 30, 2008, 744 days elapsed. Pursuant to New York State Environmental Law § 71-3303, the maximum potential penalty assessable against the defendants is $372,000.00 to be appropriate for defendants' conduct up to and including May 30, 2008.[4] In so finding, the Court notes that the

[4] The Court makes no present finding or determination regarding plaintiff's request for prospective civil penalties for each day after may

potential income generated from such dock extensions would have exceeded such penalty.

3) With regard to the unpermitted operation of personal water craft from the marina in 1997 and 1998, defendant, John Salvador, acknowledged that Mr. Robinson rented jet-skis to the public from three boat slips at the marina. Such activity apparently took place from August 15, 1997, until approximately October 15, 1997, as well as from May 15, 1998, until approximately October 15, 1998, for an approximate total of 216 days. Pursuant to New York State Environmental Conservation Law § 71-3303, the maximum potential penalty assessable against the defendants is $108,000. Although the plaintiff's calculated number of days of violation differs from that of the Court. Plaintiff requested a penalty of ten percent of the maximum, which in this case would be a penalty of $10,800.00. Keeping in mind, however, that rental of the three berthing slips to Mr., Robinson in 1998 generated approximately $3000.00 in income, the Court will assess a penalty of $5000.00 for the unpermitted rentals of jet0skis by Mr. Robinson from defendants' marina in 1997 and 1998.

4) With regard to civil penalties arising out of defendants' construction of a boat ramp on or about May 8, 2000, it warrants noting that defendants were previously advised in 1999 that a Commission permit was required for such activity. In addition, on May 6, 2000, a temporary restraining order was issued prohibiting any further construction or use of the ramp. Nevertheless, it appears that defendants thereafter improved the ramp to some degree, which is now capable of launching boats, although defendants thereafter improved the ramp to some degree,

---

30, 2008, that such dock extensions, including their outermost pilings and crossbeams, purportedly remain in place

which is now capable of launching boats, although defendants contend it has only been used "very sporadically." While plaintiff requests a civil penalty for each day during the approximate eight year time period that the boat ramp has been in existence, imposition of such a penalty does not appear to be warranted given the lack of proof as to the extent of use of such ramp and as it appears that defendants derived minimal economic benefit directly attributable to same. Accordingly, the Court will assess a penalty of $500.00 for construction of the boat ramp without a permit and, assuming the ramp was used at least twice a year during the past eight years, the Court will further assess a civil penalty in the amount of $8,000.00 for the continued maintenance and use of such ramp without a permit.

5) With regard to the Defendants' failure to pay their regulatory fees to the Commission, it warrants noting their 1999 and 2000 fees remained unpaid until May 19, 2000. Defendants were previously notified that checks should properly be made payable to the Lake George Park Commission, yet defendants delayed in doing so. Accordingly, the Court will assess a civil penalty of $500.00 against the defendants for failure to timely and properly tender payment of the 2000 regulatory fees to the plaintiff. The Court further finds that, pursuant to 6 NYCRR § 645-7.4, the plaintiff is also entitled to $1027.00 in late payment penalties for failure to timely and properly tender payment of the 1999 and 2000 regulatory fees to the plaintiff.

6) Finally, with regard to the plaintiff's application to find defendants in contempt for their violation of

this Court's Order requiring removal of the six-foot extensions of their finger docks, the Court finds that defendants clearly had notice of this Court's prior Order, which was clear and explicit, and that plaintiff has adequately established defendants' disobeyance of such Order, to the detriment of the plaintiff and its regulatory authority. *See,e.g.* Aison v. Hudson River Black River Regulating District, 54 A.D. 3d 457, 862 N.Y.S. 2d 642 (3d Dept., 2008). Accordingly, the plaintiff's motion for civil contempt against the defendants is granted and, pursuant to Judiciary Law § 773, a penalty of $250.00 is assessed against the defendant.

The foregoing constitutes the Decision and Order of this Court. All other relief requested by the parties is denied.

Signed this 10th day of October, 2008 at Johnstown, New York.

/s/
Hon. Richard T. Aulisi
Justice of the Supreme Court

STATE OF NEW YORK
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-sixth day of October, 2010

Present, HON. JONATHAN LIPPMAN, Chief Judge, presiding.

Mo. No. 2010-9991
Lake George Park Commission,
Respondent,

v.

John Salvador, Jr., et al.,
Appellants.
(And Another Action.)

A motion for leave to appeal to the Court of Appeals in the above causes having heretofore been made upon the part of the appellants herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/_____

Stuart M. Cohen
Clerk of the Court

STATE OF NEW YORK
SUPREME COURT, APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

Decided and Entered: June 28, 2010
Case # 507817

LAKE GEORGE PARK COMMISSION, Respondent,

v.

DECISION AND ORDER ON MOTION

JOHN SALVADOR JR, et al., Individually and Doing Business as DUNHAM'S BAY BOAT and BEACH CLUB and as DUNHAM'S BAY LODGE, et al.,
Appellants.

Motion for relief from judgment or order under CPLR 5015 or, in the alternative, for permission to appeal to the Court of Appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

CARDONA, P.J., LAHTINEN, MALONE, JR., STEIN and GARRY, JJ., concur.

ENTER:
/S/
Michael J. Novack
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISON: THIRD DEPARTMENT
LAKE GEORGE PARK COMMISSION,

Respondent,

-against-

JOHN SALVADOR, JR., et al., Individually and Doing Business as DUNHAM'S BAY BOAT and BEACH CLUB And as DUNHAM'S BAY LODGE, INC., et al.,
Appellants.

Case No. 507817

Warren County
Index No. 45591

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the Memorandum and Order of the State of New York Supreme Court, Appellate Division, Third Judicial Department in the above-captioned appeal, a copy of which is attached hereto, was entered on April 8, 2010.

Dated: April 9, 2010

ANDREW CUOMO
Attorney General of the State of New York
Attorney for Respondents

by: Lawrence A. Rappoport

To: Madeline Sheila Galvin, Esq.
Galvin and Morgan
217 Delaware Avenue
Delmar, NY 12504

Associate Attorney
New York State
Department of Law
The Capitol
Albany, New York 12224
(518) 474-1191

STATE OF NEW YORK
SUPREME COURT, APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

Decided and Entered: April 8, 2010 507817

LAKE GEORGE PARK COMMISSION,
Respondent,

JOHN SALVADOR, JR. et al.,
Individually and Doing Business as DUNHAM'S BAY BOAT AND BEACH CLUB as DUNHAM'S BAY LODGE, et al.,
Appellants.

MEMORANDUM AND ORDER

Calendar Date: February 18, 2010

Before: Cardona, P.J., Lahtinen, Malone Jr., Stein and Garry, JJ.

Galvin & Morgan, Delmar (Madeline Sheila Galvin of counsel), for appellants.

Andrew M. Cuomo, Attorney General, Albany (Lawrence A. Rappoport of counsel), for respondent.

Lahtinen, J.

Appeals (1) from an order of the Supreme Court (Aulisi, J.), entered November 25, 2008 in Warren County, which assessed civil penalties against defendants upon a prior order of said court, and (2) from the judgment entered thereon.

Defendants John Salvador Jr. and Kathleen Salvador own real property on the shore of Lake George that they lease to their wholly owned corporation (defendant Dunham's Resort Corporation), which operates a marina (Dunham's Bay Boat and Beach Club). In the summer of 2003, defendants constructed a floating structure (approximately 76 feet by 8 feet) that they affixed to their permanent docks and used as boat berths for members of the marina. The following spring, defendants added another such it considered the structures to be docks, that a permit was required before adding docks on the lake, and that they must remove the floating docks. Defendants responded by contending that the structures were not docks, but were boats or vessels and they refused to remove them.

Plaintiff commenced this action in June 2004 seeking injunctive relief and civil penalties. By order dated April 15, 2005 (and entered May 9, 2005), Supreme Court granted plaintiff's motion for summary judgment determining that the structures were docks. The court ordered defendants "to remove immediately their floating docks from Lake George." Defendants did not remove the two docks from the lake and its navigable tributaries (see 6 NYCRR 645-2.1 [cd]) and, in fact, added a third floating dock in late May 2005. Following a hearing on the issue of civil

penalties as directed in the order entered in May 2005, Supreme Court did not impose any penalty for the period prior to the April 15, 2005 date of its decision or 10 days thereafter to afford ample time for defendants to have received notice of the decision. However, it imposed a penalty of $500 per day for the period April 25, 2005 to October 14, 2005 for each of the two existing docks and May 31, 2005 to October 14, 2005 for the added third dock, resulting in total civil penalties of $241,500. Defendants appeal.[1]

Initially, we find that, contrary to plaintiff's contention, defendants' appeal from the final judgment brings up for review issues implicated in Supreme Court's order entered in May 2005. That order, among other things, expressly contemplated further nonministerial proceedings in to determine civil penalties. It was thus nonfinal and reviewable in the appeal from the subsequent final judgment (see CPLR 5501 [a] [1]; Burke v Crosson, 85 NY2d 10, 15 [1995]; Rybicki v Beltrone Constr. Co./McManus. Longe. Brockwehl, 199 AD2d 706, 707 [1993]).

We are unpersuaded, however, that Supreme Court erred in determining that the disputed structures were docks and not boats or vessels. The ECL and plaintiff's regulations prohibit the construction of a dock or wharf without a permit

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[1] We have, as requested by Defendants, taken judicial notice of and considered the record in Lake George Park Commn V Salvador (___ AD3d ___ [decided herewith] [appeal No 506034]), which involved the same parties and another enforcement action (see generally Oakes v Muka, 56 AD3d 1057, 1059 [2008]; Edgewater Constr Co., Inc. v 81 & 3 of Watertown. Inc., 24 AD3d 1229, 1231 [2005]).

(see ECL 43-0117 [4]; 6 NYCRR 646-1.1 [a] [1]). A wharf is defined as "a wharf or portion of a whart extending from or along the lakefront"(6 NYCRR 645-2.1 [p]). Plaintiff submitted affidavits establishing, and photographs clearly depicting, that the disputed structures were docks being used to berth boats. Plaintiff's position regarding the structures was consistent with the regulatory language as well as common understanding of what constitutes a dock. No substantial factual issues requiring a trial were set forth by defendants and thus summary judgment was properly granted.

Defendants content that the penalties should have been limited to the corporate defendant and not extended to the individual defendants. This argument was not raised before Supreme Court and, accordingly, was not properly preserved for our review (see State of New York v Williamson, 8 AD3d 925, 929 [2004]). In any event, the individual defendants, among other things, were the sole owners and officers of the corporation, they were personally involved in the construction and installation of floating docks, and they had commenced several proceedings in their individual names challenging plaintiff's various actions as to the marina. This record supports assessing penalties against all defendants (see ECL 71-3303 [1]; see generally Matter of Colella v New York State Dept. of Envtl. Conservation, 196 AD2d 162, 169 [1994]; Matter of Jackson's Marina v Jorling, 193 AD2d 863, 866 [1993]).

Next, we find unavailing defendants' argument that reversal is required because plaintiff did not comply with conditions set forth in

ECL 71-3305 (3) when seeking a penalty in excess of $5,000. Under ECL 71-3303 (1), a civil penalty can be assessed by either "[plaintiff] after an opportunity to be heard, or by the court in any action of proceeding initiated by the [A]ttorney [G]eneral in the name of [plaintiff]." Where plaintiff seeks to assess a penalty in an administrative proceeding, the procedures of ECL 71-3305 (3) and, concomitantly, ECL 71-1709 apply. However, where, as here, an action is commenced by the Attorney General in Supreme Court, the procedures of ECL 71-3305 (3) do not apply. Nor is there any statutory requirement that plaintiff pursue an administrative proceeding before an action may be commenced in court.

Turning to the issue of the amount of the civil penalty imposed, "a court has broad discretion in choosing the amount of such a penalty so long as the court explains its choice and it is not disporporionate to the offense" (Tatta v State of New York, 20 AD3d 105 [2005], lv denied 5 NY3d 716 [2005]; see Matter of People v Applied Card Sys., Inc., 41 AD3d 4, 10 [2007], affd 11 NY3d 105 [2008], cert denied sub nom. Cross Country Bank, Inc. v New York, ____ US ____, 129 S Ct 999 [2009]). Although Supreme Court noted its skepticism regarding the sincerity and reasonableness of defendants' position that the floating docks were vessels not subject to plaintiff's regulation, it nevertheless assessed no penalty for the lengthy period of time prior to its April 2005 ruling on that issue, during which defendants made use of two of the floating docks. The court also assessed no penalty during the 10 days after its ruling to ensure adequate notice and opportunity to act in compliance therewith. However, thereafter defendants not only continued to keep the two floating docks in the

lake and its navigable tributaries, but also added a third floating dock. While the amount of the penalty imposed was significant, it was considerably less than authorized by statute (see ECL 71-3303 [1]) and, under the circumstances, fell within Supreme Court's discretion.

We have considered the remaining issues asserted by defendants and find them unavailaing.

Cardona, P.J., Malone Jr., Stein and Garry, JJ,. concur.

ORDERED that the order and judgment are affirmed, without costs.

ENTER:
/S/
Michael J. Novack
Clerk of the Court

STATE OF NEW YORK
SUPREME COURT, APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

Decided and Entered: February 17, 2009
Case # 506034

LAKE GEORGE PARK COMMISSION, Respondents,	DECISION AND ORDER ON MOTION
v	
JOHN SALVADOR, JR. et al., Doing Business as DUNHAM'S BAY BOAT AND BEACH CLUB INC., and Doing Business as DUNHAM'S BAY LODGE, Et al., Appellants. (And Another Related Action.)	

Motion for stay pending appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

PETERS, J.P., LAHTINEN, KANE, MALONE JR.

and STEIN, JJ., concur.

ENTER:
/S/
Michael J. Novack
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: THIRD DEPARTMENT

LAKE GEORGE PARK COMMISSION,
Plaintiff-Respondent,

-against- NOTICE OF ENTRY

JOHN SALVADOR, JR. and KATHLEEN A. SALVADOR, Individually and as the owners, Officers and managers of the DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC. and/or DUNHAM'S BAY BOAT and BEACH CLUB, INC.; DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC. and/or DUNHAM'S BAY BOAT and BEACH CLUB, INC., and WILLIAM ROBINSON, Individually and d/b/a LAKSESIDE BOAT RENTALS,

AD Case No. 506034
Warren County Index No. 37573 (Appeal No. 1)

Defendants-Appellants,

WILLIAM ROBINSON, Individually and d/b/a LAKESIDE BOAT RENTALS,
Defendant.

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: THIRD DEPARTMENT

LAKE GEORGE PARK COMMISSION,
Plaintiff-Respondent,

-against-

JOHN SALVADOR, JR. And KATHLEEN SALVADOR, individually, d/b/a DUNHAM'S BAY BOAT AND BEACH CLUB, and d/b/a DUNHAM'S BAY LODGE, And DUNHAM'S RESORT CORP.,
Defendants-Appellants.

AD Case No.
Essex County
Index No. 45591
(Appeal No. 2)

PLEASE TAKE NOTICE that the Decision and Order on Motion of the Appellate Division, Third Department, denying the motion for a stay of enforcement pending appeals in the above-entitled matters, a copy of which is attached hereto, was filed and entered in the Third Department County Clerk's Office on February 17, 2009.

Dated: February 18, 2009

Andrew M. Cuomo
Attorney General
of the State of New York
By: /S/

Lawrence A.
Rappoport
Associate Attorney
Attorney for the
Lake Geroge Park
Commission
The Capitol
Albany, New York
12224
(518) 474-1191

To: Galvin and Morgan, Esqs.
217 Delaware Avenue
Delmar, New York 12054

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 17, 2009
Case # 506034

LAKE GEORGE PARK COMMISSION Respondent, V	DECISION AND ORDER ON MOTION

JOHN SALVADOR JR. et al., Doing Business as DUNHAM'S BAY BOAT AND BEACH CLUB, INC., and Doing Business As DUNHAM'S BAY LODGE, Et al., Appellants.

(And Another Related Action.)

Motion for stay pending appeals

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

PETERS, J.P., LAHTINEN, KANE, MALONE JR. AND STEIN, JJ., concur.

ENTER:
Michael J. Novack

Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK WARREN COUNTY

LAKE GEORGE PARK COMMISSION,

Plaintiff,

-AGAINST-

JOHN SALVADOR, JR. And KATHLEEN SALVADOR, individually, d/b/a DUNHAM'S BAY BOAT AND BEACH CLUB, and d/b/a DUNHAM'S BAY LODGE, And DUNHAM'S RESORT CORP.,

Defendants.

NOTICE OF ENTRY

Index No. 45591
RJI. No.
56-1-2004-033636

PLEASE TAKE NOTICE that the Decision and Order in the above-entitled matter, signed by the Hon. Richard T. Aulisi on October 10, 2008, a copy of which is attached hereto, awarding Plaintiff Lake George Park Commission a total sum of $241,500.00 in civil penalties against defendants John Salvador, Jr., Kathleen A. Salvador, and Dunham's Resort Corp. (the "Salvador defendants") was filed and entered in the Warren County Clerk's Office on November 25, 2008, and docketed as a

judgment pursuant to C.P.L.R. § 2222 on December 4, 2008.

Dated: December 15, 2008

Andrew M. Cuomo
Attorney General
Of the State of
New York
By: _____
Philip Bein
Assistant Attorney
General
Attorney for the
Lake George Park
Commission
The Capitol
Albany, New York
12224

To: Galvin and Morgan, Esq.
217 Delaware Avenue
Delmar, New York 12054

SUPREME COURT OF THE STATE OF NEW YORK WARREN COUNTY

LAKE GEORGE PARK COMMISSION,

75 Fort George Road
P.O. Box 749
Lake George, New York 12845,
Plaintiff,

JUDGMENT

-against-

Index No. 45591
RJI. No.
56-1-2004-033636

JOHN SALVADOR, JR.
And KATHLEEN SALVADOR,
Individually, d/b/a DUNHAM'S
BAY BOAT AND BEACH
CLUB, and d/b/a DUNHAM'S
BAY LODGE,

37 Alexy Lane
Lake George, New York 12845

And

DUNHAM'S RESORT CORP.,

3000 State Route 9L
Lake George, New York 12845,
Defendants.

The claim of plaintiff Lake George Park Commission for civil penalties against defendants in the above entitled action having come on for trial before the Honorable Richard T. Aulisi on July 8, 27, and 29, 2005; August 1 and 3, 2005; January 3, 5 and 6, 2006; and March 6, 2006, and the court having signed a Decision and Order on October 10, 2008, a copy of which is annexed hereto, which was entered in the Warren County Clerk's Office on November 25, 2008,

NOW, on the motion of Andrew M. Cuomo, Attorney General of the State of New York, Philip Bein, Assistant Attorney General, of counsel, it is

ADJUDGED AND DECREED that plaintiff Lake George Park Commission shall recover from defendants John Salvador, Jr., Kathleen A. Salvador, and Dunham's Bay Resort Corp., the total sum of $241,500.00 in civil penalties and that plaintiff Lake George Park Commission shall have execution therefore.

Judgment signed this 4th day of December, 2008.

/S/
WARREN COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WARREN

LAKE GEORGE PARK COMMISSION,
Plaintiff,

DECISION & ORDER

-vs-

Index # 45591
RJI # 56-1-04-0336

JOHN SALVADOR, JR., AND
KATHLEEN SALVADOR,
Individually, d/b/a DUNHAM'S
BAY BOAT and BEACH CLUB,
And DUNHAM'S BAY LODGE;
And DUNHAM'S RESORT CORP.
Defendants.

The parties in the above entitled matter have been participants in numerous lawsuits involving the defendants' property and/or business which are situated on the shores of Lake George in Warren County, New York. A portion of the litigation has proceeded through the Federal Court system and other portions of the litigation have proceeded through the State Court system. By Decision dated April 15, 2005, this Court granted summary judgment to the plaintiff, finding defendants to be in violation of the State Environmental Conservation Law § 43-0117 (4) and 6 NYCRR § 646-1.1(a) by placing three floating

docks in the waters of Lake George without the necessary permits. Pursuant to this Court's Decision dated April 15, 2005, plaintiff was to submit a Proposed Order directing immediate removal of the docks and plaintiff's application for civil fines was granted, with a hearing scheduled to determine the amount of such fines. Following a hearing in such matter, plaintiff presented an oral summation on March 6, 2006, while defendants chose to submit their summation in writing. The Court has withheld its determination pending the conclusion of hearings in a separate proceeding also involving violations of the Environmental Conservation Law by defendants. Those hearings have now been completed and a Decision and Order in that proceeding is being issued concurrently herewith.[1]

Upon review, the Court finds that the first dock appears to have placed in the waters of Lake George on or before June 30, 2003, and impermissibly remained in such waters until October 14, 2005.[2] The second dock appears to have been placed in the waters on or before June

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[1] Lake George Park Commission vs John Salvador, Jr., and Kathleen A Salvador, Individually and as the Owners, Officers and Managers of Dunham's Resort Corp , d/b/a Dunham's Bay Lodge, Inc , d/b/a Dunham's Bay Boat and Beach Club, Inc., Dunham's Resort Corp., d/b/a Dunham's Bay Lodge, Inc., and/or Dunham's Bay Boat and Beach Club, Inc., and William Robinson, Individually and d/b/a Lakeside Boat Rentals – Index # 37573

[2] The floating docks actually remained in the water for a longer period of time, yet the Court permitted defendants to move the docks back into the lake on October 15, 2005 for winter storage.

30, 2004, and impermissibly remained in such waters until October 14, 2005. The third dock was placed in the waters on or before May 31, 2005, and impermissibly remained in the waters until October 14, 2005.

Environmental Conservation Law § 71-3303 states as follows:

> 1. Any person who violates any provision of, or fails to perform any duty imposed by article forty-three of this chapter or any rule of regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the Lake George Park Commission made pursuant to article forty-three of this chapter shall be liable for a civil penalty not to exceed five hundred dollars for each such violation and an additional penalty of five hundred dollars for each day during which such violation continues, to be assessed by the Lake George Park Commission after an opportunity to be heard, or by the court in any action or proceeding initiated by the attorney general in the name of the Lake George Park Commission. In addition thereto, such person may, by similar process, be enjoined from continuing such violation, and any permit or certificate issued to such person may be revoked or suspended, or a pending renewal application denied based upon such violation.

Accordingly, while it would be permissible to assess the maximum civil penalties against the defendants based upon the total number of days that each floating dock remained in the waters of Lake George, including the navigable tributaries of the Lake, the Court finds that doing so would result in an excessive penalty to the defendants. The sincerity and reasonableness of the defendants' belief that such floating docks were vessels not subject to the plaintiff's regulation is certainly subject to question, and their attempt to claim they are other than docks appears to be a ruse to avoid the constraints of the applicable statutory scheme. Nevertheless, the Court finds that, as of receipt of this Court's April 15, 2005, Decision, defendants were clearly on notice that such floating docks were impermissibly placed in the waters of Lake George, subjecting defendants to civil penalties. Defendants' failure to remove such docks after such date and indeed, defendants' subsequent placement of a third dock into the waters of Lake George after such date warrants imposition of the maximum penalties set forth in Environmental Conservation Law § 71-3303.

Thus, insofar as such Decision was mailed on April 20, 2005, and defendants would have presumably received same by April 25, 2005, at the latest, the Court will assess a civil penalty of $500.00 as of April 25, 2005, for each of the two docks previously placed in the waters of Lake George as well as an additional daily penalty of $500.00 per dock until October 14, 2005. In addition, the Court will assess a civil penalty of $500.00 for the third dock placed in the waters of

Lake George by the defendants on May 31, 2005 with an additional penalty of $500.00 for each day thereafter that such dock remained in the water, up to and including October 14, 2005. Accordingly the Court finds that plaintiff is entitled to civil penalties from the defendants in the amount of $241,500.00.

The foregoing constitutes the Decision and Order of this Court.

Signed this 10th day of October, 2008 at Johnstown, New York.

/s/
HON. RICHARD T. AULISI
Justice of the Supreme Court

TESTIMONY FROM MITIGATION HEARING RECORDS

White Testimony, Mitigation Hearing Exhibit-39
Record in #37573, at 4690-4693:

Q. I believe that you testified earlier that there were changes in Commission regulations in 1988; is that correct?

A. Yes.

Q. Okay. And did those relate to the changes or expansion of authority that was given to the Commission under Chapter 617 of the Laws of 1987?

A. Yes.

Q. Going back to the July 3rd, 1981, registration of marinas, or permitting of marinas, can you tell me what process was established to accomplish that, if any, by the DEC?

A. As I mentioned, you know, the DEC would issue a notice of pendency of the application to adjacent owners, to the town where the facility was located, perhaps to other parties of interest and/or entities within the DEC for comments. It would review the comments and make a determination.

Q. I think I missed a step. Going back to the beginning, how would someone who had docks on Lake George, or wharfs on Lake George, know that they were considered by the DEC to be a marina as of July 3rd, 1981?

A. They might read about in the newspaper, let's say, or receive notice.
Q. And who received notice?
A. I'm sorry. I don't recall.

. . . . . .

Q. . . .[H]ow someone would know that they had to register or request a permit as a marina. You indicated, I believe, in your response that some people would receive notice. Who was that notice form?
A. Well, it would have been from the DEC.

White Testimony, Mitigation Hearing Exhibit-39 Record in #37573, at 4697-4701:

Q. You testified a couple of moments ago about the 646 originally--or the original 646--what do you mean by that?
A. I meant the 646 regulations that were promulgated by DEC on July 3rd, 1981.
Q. At some point in time did there come to be a different 646?
A. Yes.
Q. Can you explain?
A. The current 646 regulations of the commission were repealed and supplanted.
Mr. Rappoport: Supplanted the --
The Witness: The original DEC 646 regulations.

Q. So am I correct that as of today, DEC has no regulations that relate to Lake George under 646?
A. No.
Q. Included in 646?
A. That's right. The 646 subpart is now exclusively regulations of the Lake George Park Commission.

. . . . . .

Q. After January 1st, 1988, were there any provisions of 646 of the DEC regulations that were continued by the Com-mission in the July 3rd--I'm sorry--from the July 3rd, 1981 DEC regs?
Mr. Rappoport: If I may ask, do you mean without change?
Ms. Galvin: Yes.
A. I don't know.
Q. Are there any that continued in substantially the same form?
A. I'm sure there are some.

. . . . . .

Q. Going back to the July 3rd, 1981, DEC regs. If someone who owned a facility which the DEC would have identified as a marina failed to obtain a permit, what, if anything, did you as the secretary of the Commission have to do in your job responsibilities?
A. We--I might have to make a written confirmation of that failure, develop materials that would support that, report that to my superiors, draft notices of the condition of

noncompliance, participate with the regional staff in compliance efforts, appear as a witness in enforcement cases, provide testimony.

Q. In your experience as secretary to the Commission and later as senior environmental analyst while you were working for the DEC, were there instances in which enforcement actions were brought against person or persons who operated marinas that the DEC identified as marinas, but had not filed for permits?

A. I'm sure there must have been, but I just don't recall any specific cases.

Q. And do you recall how enforcement procedures were followed with respect to any of those which you can't identify specifically, but in general?

A. Generally, Notice of the Condition of Noncompliance would be given to the appropriate representatives of the marina. They might be afforded an opportunity to rectify that situation via an order on consent, perhaps, invited to apply for a permit going forward in order to satisfy the requirements.

Q. And when you say apply for a permit going forward, would that be a permit that would have been issued to wipe out the prior non-compliance?

A. No. Typically the DEC policy would be not to issue a permit for an activity

that had been completed. However, when talking about regulations that deal with ongoing permit requirements, in order to afford the parties who had rectified the violation through some means, the opportunity then to obtain the permits that they would be required to have, then they would be able to apply--once they rectified the violation--they would be able to apply for a permit going forward.

Q. And does the process you just described continue in essentially the same form today, or has that changed under the Commission?

A. It continues in essentially the same form.

. . . . . .

A. The Lake George Park Commission would have been substituted for DEC. But they would be similar, those procedures.

White Testimony, Mitigation Hearing Exhibit-39 Record in #37573, at 4702-4704:

Q. I'll rephrase. Are there any marinas in existence today which were in existence prior to or at the time of the inception of the DEC July 3rd 1981 regs requiring permitting of marinas which still have not been permitted, if you know?

Mr. Rappoport: Again, continuing objection. [The objection was not raised at trial by Plaintiff, nor was it ruled on by the Court below]

A. There is one I know of.

Q. Can you identify it?

A. I believe it's called the Silver Bay Marina.

Q. Has enforcement action been taken with respect to Silver Bay, or whatever its name is, the existing marina.

. . . . . .

A. I just don't recall the particulars of that.

Q. Do you recall when that occurred approximately?

A. No, I don't.

Q. And is that marina still in existence?

A. I don't know.

Q. After January 1st, 1988, did the Commission issue marina permits to marinas which had not been permitted, which had been in existence but had not been permitted under the July 3, 1981, DEC regs?

Mr. Rappoport: Again, a continuing objection. [The objection was not raised at trial by Plaintiff, nor was it ruled on by the Court below]

A. Yes.

Q. And how long did that continue?

A. It continues till today.

White Testimony, Mitigation Hearing Exhibit-39
Record in #37573, at 4709-4711:

Q. Now, during the period of time from June 3rd,1988 until the Commission got around to, say, Joe's Marina, Joe's Marina had been permitted by the DEC under prior regs, would Joe's Marina have been deemed by the Commission after June 3, 1988 to be unpermitted? Or am I missing something in this process?

A. Well, it would be deemed unpermitted, but it would not be subject to enforcement.

Mr. Rappoport: And if you can explain more thoroughly.

[The objection was not raised at hearing by Plaintiff, nor was it ruled on by the Court below]

A. Well, we would hold that it only fair that facilities that were lawfully existing, subject to new permit requirements and standards, be afforded notice and an opportunity to apply before being subject to enforcement.

Q. Well [*sic*. Were] all those marinas that held marina permits as of June 3rd, 1988 given notice of revocation of revocation of their DEC permits?

Mr. Rappoport: That wasn't Mr. White's testimony. It wasn't notice of revocation.

Q. If it wasn't revocation, what was it? Can you explain?

A. They were given notice that permit requirements--and new standards and permit requirements were established by the Commission. New standards would apply, and that they were afforded an opportunity to apply for those --that permit.

Q. Were they informed that their DEC permit no longer--or ceased to exist?

A. I don't recall the particulars of the notice, but the relevant parts were now permit required, opportunity to apply.

Q. Between January 1, 1988 and June 3rd, 1988, what was the status of the marinas that held DEC permits?
Mr. Rappoport: Maybe you could rephrase that. When you say status, it's unclear.

Q. Were they permitted?

A. Well, I don't know exactly how you--that might require interpretation. But I do know that the responsibility to administer the regulations was transferred by legislation to the Commission.
Mr. Rappoport: When you say regulation of the--

A. Of the original, what we've been referring to as the original 646 regulations. Nothing--those regulations continued to exist. They had not been repealed. So certainly, the Commission took no

enforcement action against people for not having a permit during that period.

Testimony, John Salvador at Record in #37573, at 5505-5508:

Q. Mr. Salvador, after you learned that the Park Commission had a problem with your six-foot dock extensions, did you do anything to attempt to remedy it?

A. Yes.

Q. And what did you do?

A. What we tried to do was to show the Commission when the dock extensions were put in place and the permits under which we were working at the time, the permits that were in effect and the jurisdiction of the issuing agency over that portion of the work that we were doing.

Mr. Rappoport: Your Honor, I'm going to move to strike that . . .

Ms. Galvin: Your Honor, may I be heard on that point?

The Court: Yes, you may.

Ms. Galvin: It is our intention that it has never been thoroughly litigated because Mr. Salvador- -this is- -the hearing on the other matter referred to as Salvador 2 which also went into mitigation and this particular hearing are the first opportunities that Mr. Salvador has had to obtain any

evidence in the possession of the Park Commission, to have witnesses and to be able to determine, for example, a perfect example is the Mike White deposition where he learned about the possibility of being able to go back and amend his registration form. If he had known about that before he certainly would have taken advantage of it. That was the first time we heard about it the next application came to him, he filled it out and he sent it in immediately but he has never had that opportunity. On the order to show cause, I put in numerous subpoena requests because I needed judicial subpoenas from Judge Moynihan in order to be able to have the Park Commission people compelled to come with their records. If we had had those at that time, I sincerely doubt if we would be sitting here today. It would have been resolved.

The Court: Who should I be angry with, Judge Moynihan then? With all candor, Mr. Salvador, I'm worried about myself at this point and my mental stability.

Ms. Galvin: Your Honor, this has been the first opportunity we've had to cross-examine any witnesses to get the document information that we've need and we couldn't- -we could not defend when we weren't given a hearing.

The Court: I understand that but the issue we're dealing with before me is mitigation, amount of penalties, if any, and /or mitigation. I don't need- -I have been involved now with these cases, these Salvador cases for several years. I think I have a good handle on the extent to which Mr. Salvador is engaged in theses things and has some pretty good knowledge of the situation for a layperson. I don't need a detailed recitation of what he might not have known or what he might have tried to do had he known. I think he would have put his full efforts into whatever it was, knowing him as I do.
The question is just give me a general, a general statement. I understand where you're going with this but honestly, I'm familiar with it. I think the Appellate Division is familiar with it so whoever has to pass on all of this understands and I think you're just cluttering the record and it's not necessary. I understand his rationale and I'm saying that on the record, I'm giving it to you. I understand his rationale.
Next question.

CURRENT
OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

PART 646. SUBSTANTIVE REGULATIONS
§§646.1 to 646.3. Repealed

SUBPART 646-1. DOCKS, WHARFS, MOORINGS AND MARINAS

§6 NYCRR 646-1.1 Docks, wharfs and moorings.

(a) General prohibitions.

(1) No person shall construct, erect, place, alter, modify, enlarge, or expand any dock, wharf or mooring on waters of Lake George without having first obtained a permit from the commission; and

(2) No person shall use or maintain a dock, wharf or mooring on waters of Lake George unless the dock, wharf or mooring is registered with the commission, and the fees required pursuant to Subpart 645-7 are paid in full when due.

(b) Annual registration. Each dock, wharf and mooring shall, on or before April 1st of each year, be registered with the commission on such forms as the commission may prescribe. Such forms shall include certification by the owner or operator of the number of vessels to be berthed at the facility and the names of the owners thereof, including the vessels that will be registered to the owner or the owner's immediate family, and the vessels that will be registered to other persons.

(7) . . . . . .

In determining the maximum number of permitted docks, wharfs or moorings, the commission may review any subdivision of land created on or after the effective date of these regulations [June 3, 1988] which involved the lot or parcel in issue to determine the maximum number of docks, wharfs or moorings permitted and base such number upon the total foot-age of lakefront prior to the subdivision.

6 NYCRR 646-1.2
SUBPART 646-1. DOCKS, WHARFS, MOORINGS AND MARINAS.

§646-1.2. Class A Marinas.
In addition to the requirements of other sections of this Subpart, all Class A marinas servicing the waters of Lake George shall comply with the following:

(a) General requirements.

(1) No person shall construct, expand, or operate a Class A marina servicing the waters of Lake George, or alter or expand the number or type of services or recreational activities offered without obtaining a permit from the commission, or if a permit has been issued for the subject facility, a modification to the permit for that facility which authorizes the new or expanded services or recreational uses. Permits shall be issued for a maximum of 5 years.

(2) No permit shall be issued for the construction, operation or expansion of a quick launch facility

which was not in existence and operating, or for which no permit was issued, prior to the effective date of these regulations.

(3) Permits issued pursuant to §646-1.2(a)(1) of this Title may be issued only to the owner of the facility or in the alternative to a lessee of the facility and shall authorize activities and uses at that facility. A permit may not be relocated to other facilities unless a permit for the different facility has been issued by the commission. Marina permits will be modified to reflect a sale or transfer of the facility to another owner subject to a determination by the commission that the facility is in accordance with the requirements of this Subpart and permits issued in accordance with this Subpart. Lakefront marina facilities at separate locations under common ownership shall require separate permits pursuant to §646-1.2(a)(1) of this Title.

(4) Special Permits. A special permit is a permit granted, by the Commission to operate any new recreational activity as defined in §646-2.3(a)(1) of this Title or the recreational activities or uses contained in §646-1.4 of this Subpart. Special permits are not transferrable to another location and shall not be leased or transferred to another location, facility or operator.

(b) Specific requirements. No Class A marina shall be constructed, expanded or operated without providing the following:

(1) Restrooms, including toilet facilities, for the use by customers, which shall be available at all times from May 1st to October 31st of each year.

(2) One on-site parking space or adequate off-site parking for each vessel berthed. Where the Class A marina offers rides, instruction or water-based recreation for a fee, adequate parking must be provided for customers of the Class A marina.

(3) An adequate storage area for trailers or the storage of trailers shall be prohibited.

(4) Where applicable, proof of compliance with New York State fire code standards and DEC bulk storage standards for the storage of gasoline and hazardous materials. If applicable, no permit application shall be complete until proof of compliance is submitted to the commission.

(5) For each Class A marina with a petroleum sales facility, a plan relative to the inspection and maintenance of petroleum storage facilities and all associated equipment, and appropriate measures relative to spill prevention and countermeasures. Such plan shall include:

(i) the inspection of all plumbing and related pumping equipment, not less than daily, to guard against leakage of petroleum products into the waters of the

park;

(ii) the training of each person pumping motor fuels in procedures to guard against the spillage of such motor fuels into the waters of the park and procedures to respond to a spill; and

(iii)the maintenance, in close proximity to the pumping facilities, of such equipment as is necessary to respond to any spill of petroleum products into the waters of the park or on to land or

structures where it may flow into the waters of the park.

(6) Adequate garbage and debris disposal facilities with leakproof containers, which must be properly maintained.

(7) Facilities for the disposal of sanitary wastes from vessels with on-board sanitary equipment including:

(i) on-site pumpout facilities, or proven access to pumpout facilities, for use by vessels which use the services of the Class A marina; and

(ii) facilities for the disposal of waste from portable marine toilets, or proven access to such facilities, for use by vessels which use the services of the Class A marina.

Such facilities shall be designed, installed, operated and maintained to prevent the discharge of contaminants from marine toilets to the waters of the park or the ground from which they may flow into the waters of the park. For the purposes of this paragraph, vessels using the services of the Class A marina shall include vessels which moor, dock or are quick launched by the marina. Written proof of access to disposal facilities for a period equal to the life of the permit shall be required. Off-site facilities must be located within a reasonable distance from the Class A marina.

(8) A boat cleaning area that is designed, operated and maintained in such a manner to prevent contamination of the waters of the park shall be provided, or boat cleaning shall be prohibited.

(9) All Class A marina owners or operators engaged in the rental of personal watercraft (PWC) as that term is defined in §646-2.3(a)(3) of this Title upon the waters of Lake George shall in addition to the regulations governing PWC contained in Subpart 646-2 of this Title comply with the following regulations:

(i) The owner or operator of a PWC shall ensure that prior to operation all users of PWC have read the rules and regulations governing their operation as contained in this Subpart, as well as Subpart 646-2 of this Title. All users shall sign a form prepared by the owner or operator that indicates the user has read said rules and regulations. The owner or operator shall maintain written records that the above requirements have been complied with. The records are subject to inspection by the commissioner upon reasonable notice.

(ii) If the PWC is part of a rental fleet or group of PWCs, a tour guide shall operate a vessel with the fleet or group.

(iii) A fleet or group shall not consist of more than 6 PWC. The tour guide shall guide the operations and behavior of the fleet or group. The tour guide shall not be in charge of more than 1 fleet or group at any time.

6 NYCRR 646-1.4
SUBPART 646-1. DOCKS, WHARFS, MOORINGS AND MARINAS

§646-1.4. Special permits for recreational uses.
(a) New recreational activities. No person shall operate or engage in any new recreational activity

as de-fined in §646-2.3(a)(1) of this Title or recreational use without first obtaining a special permit from the commission pursuant to this Subpart.

(b) Seaplanes.

(1) No person, except for a gratutitous guest, shall berth a seaplane or use any dock, wharf, mooring or ramp, or any other facility for the berthing of a seaplane without having first obtained a special permit from the commission. When issued, a special permit shall be issued to the person owning the seaplane. Special permits issued pursuant to this section are not transferrable. Discontinuation of the authorized use for a period of 1 year of more shall result in expiration of the special permit.

(2) A special permit pursuant to this section shall be granted upon timely application and payment of any application fees, to any person owning a dock, wharf or berthing facility, mooring or ramp which has been in continual use for the berthing of a seaplane prior to the effective date of these regulations except that such permit shall be conditioned on, and each such seaplane owner shall conform with, the provisions of paragraph (1) of this subdivision.

(3) The following provisions shall apply to the operation of seaplanes:

(i) Commercial use of a seaplane to or from the waters of Lake George is prohibited as provided in §248 of the General Business Law of the State of New York.

(ii) Seaplanes shall be operated in such a manner so as not to cause unnecessary audible impacts to adjacent property owners.

(iii) All facilities used for seaplanes including any dock, wharf or mooring or other berthing facility shall conform with the provisions of this Subpart.

(iv) Seaplanes shall be berthed in accordance with the provisions of this Subpart.

(v) Issuance of a special permit pursuant to this section shall be subject to the requirements set forth in §§646-1.2 and 646-1.5 of this Title.

(c) Parasails.

(1) No person shall use or operate a parasail on the waters of Lake George without first having obtained a special permit from the commission. Special permits issued pursuant to this section are not transfer-able. Discontinuation of the use or operation of any parasail for a period of 1 year or more shall result in expiration of the special permit.

(2) Whenever a parasailing operation and the facility where the parasailing operation is berthed and maintained are held in common ownership with the facilities of a Class A marina, the special permit required herein will be merged with approvals pursuant to §646-1.2 of this Subpart and only 1 application to the commission shall be required.

(3) Existing parasail and parasail operations. The owner of any parasail or the owner of any parasail business in continuous operation prior to the effective date of these regulations and registered

with the commission pursuant to Subpart 646-2 of this Title shall, upon timely filing of application and payment of any application fees, be granted a special permit subject to the requirements set forth in §§646-1.2 and 646-1.5 of this Subpart.

(4) All parasail operators shall conform with the following provisions:

(i) Each parasail operator shall be limited to a maximum of 2 take-off and landing craft and 3 parasails in the air at any 1 time.

(ii) Spectators shall not be permitted on the take-off and landing craft.

(iii) Take-off and landing craft with parasails in flight shall maintain a minimum distance between the craft of ½ mile. If such distance separation is not provided by the respective parasail operators, then the commission may prescribe zones of operation and schedules for the use of such zones as part of any special permit. Such zones and schedules shall be de-signed to afford competing business equal access to more desirable operating areas.

(iv) Parasails shall be operated only between the hours of 8 a.m. to 7 p.m. or sunset whichever is earlier.

(v) Parasails shall not be in flight within 500 feet of shore.

(5) Staff.

(i) Each operator shall maintain a crew of at least 2, including a pilot and an observer on the tow craft at all times during operation. The observer on the tow craft must be at least 16 years of age. The

observer must maintain visual contact with the parasail at all times while the parasail is in the air.

(ii) Drivers. All drivers of tow craft must pass the New York State written pilot-engineer examination. In addition, with the exception of pilots engaged, participating or employed in parasail operation upon the waters of Lake George prior to July 1, 1990, all pilots must log a minimum of 50hours actual driving time accompanied by a qualified and experienced pi-lot. A pilot is qualified and experienced if the pilot has logged at least 200 hours of actual driving time or operated a tow craft for 2 full seasons on Lake George.

(iii) Raft crew members. There shall be a crew of at least 2, including the driver on the raft at all times. With the exception of raft crew members engaged, participating or employed in parasailing activities upon the waters of Lake George prior to July 1, 1990 all raft crew members must log a minimum of 10 hours actual working time on Lake George with a qualified and experienced crew member present on the raft. A crew member is qualified and experienced if the crew member has 100 hours of actual crew time or has participated in a crew at least 1 full season on Lake George.

(iv) The owner or operator must maintain written records that the above requirements have been complied with. The records are subject to inspection by the commission upon reasonable notice.

(6) Equipment.

(i) Any parasail which contains a rip, hole, damaged line, or damaged or inoperable hardware

must be immediately withdrawn form service until repaired.

(ii) All harnesses must be kept in good and working condition and be free from any damage.

(iii) All parasails, accompanying apparatus and equipment shall be inspected by the owner or operator prior to use, on a daily basis. Written records of the inspections shall be maintained by the owner or operator and made available to the commissioner for review upon reasonable notice.

(iv) The owner or operator shall maintain written re-cords of the size, make and condition of the parasail and the date of purchase of the parasail. The records are subject to inspection by the commission upon reasonable notice.

(v)Rafts shall be equipped with radios which are capable of receiving and transmitting on marine channel 16.

(vi) A United States Coast Guard approved personal flotation device shall be provided for each person on the raft. All persons engaged in parasailing shall wear a United States Coast Guard approved Type III personal flotation device.

(7) Accidents. Accidents involving parasails shall be reported in writing by the owner or operator to the commission within 48 hours after such accident.

(d) Tour boats.

(1) No person shall construct or operate a tour boat on the waters of Lake George without first obtaining a special permit pursuant to this section. A special permit shall be granted for any tour boat which was placed into service on Lake George prior

to the effective date of these regulations. Special permits shall be issued for a term not to exceed 5 years. Special permits are subject to the requirements set forth in §§646-1.2 and 646-1.5 of this Subpart.

(2) The following provisions shall apply to the operation of existing tour boats and in the review of applications for tour boats:

(i) Tour boats shall not be berthed so as to interfere with navigation, access to adjacent property, significantly interrupt views or encroach on riparian rights of another.

(ii) All tour boats shall be designed to minimize wakes produced and shall not be operated in such a way as to produce a wake which will cause shoreline erosion or property damage or endanger the safety of others.

(iii) No tour boat shall by use of loud speakers, live music or other sound producing machines or equipment, except a horn, exceed a sound level of 86 db as measured at 50 feet from 8 a.m. to 7 p.m. or sunset whichever is earlier of 72db as measured from any point upland of the mean high-water mark from 7 p.m. or sunset whichever is earlier and 8 a.m.

(iv)Tour boat operators shall take all necessary steps to prevent any litter or debris from being thrown or discharged from the vessel and shall announce the prohibition contained in ECL, §17-1711 against littering in Lake George by loud speaker at the beginning of each tour. Each tour boat shall be equipped with an adequate number of covered receptacles.

(v) Tour boats shall be operated from properly permitted marina facilities.

(vi) Tour boats shall provide systems for the safe removal, handling and disposal of fuel, sewage, waste-water, oil and other lubricants and solid wastes.

(vii) Whenever a tour boat and the facility where it is berthed are held in common ownership with the facilities of a Class A marina, the special permit required herein will be merged with approvals pursuant to §646-1.2 of this Subpart and only one application to the commission shall be required.

6 NYCRR 646-1.5
SUBPART 646-1. DOCKS, WHARFS, MOORINGS AND MARINAS

Section 646-1.5. General provisions applicable to special permits.
(a) Prior to the issuance of any special permit pursuant to the provisions of this Subpart, the commission may require submission of information necessary to determine whether the proposed activity will result in overcrowding, congestion, safety hazards or impair the water quality or other environmental re-sources of the Park. This may include, but not be limited to, specifications on the craft, its power, maneuverability, craft speed, equipment, noise out-put, lighting, wake, proposed operation including points of departure and landing, course, speed of operation and hours of operation.

(b)The commission may require the submission of alternative design, equipment or methods of

operation to mitigate specific impacts identified by the commission.

6 NYCRR 646-1.6
SUBPART 646-1. DOCKS, WHARFS, MOORINGS AND MARINAS

Section 646-1.6. Miscellaneous provisions.(a) Prior to granting any permit relative to a dock, wharf, mooring or marina, the commission shall as-certain the probable effect of the proposed facility and the operation thereof on the health, safety and welfare of the public and on the resources of the park. The commission shall also ascertain the impact of the proposed facility upon the congestion of Lake George and the probable visual, cultural and audible effects of the proposed facility on the neighborhood in which the facility is proposed and on the park. Where the commission determines that the facility will have an undue impact upon the health, safety, or welfare of the public or the resources of the park, lead to overcrowding or congestion, or cause undue visual, cultural or audible impacts on the neighborhood or the park, a permit shall be denied.

(b) Any person owning, operating, or constructing a dock, wharf or mooring, shall be responsible for the complete removal of pilings, cribs, chains and blocks, floats and/or any other related components which are abandoned or fall into disuse.

(c) All persons shall comply with all conditions issued with any permit issued for the construction, operation or use of a dock, wharf, mooring or marina. Failure to comply with any such condition

shall be a violation and grounds for the immediate revocation of the permit and/or the imposition of a fine for each day from the date the violation first occurred until the violation is corrected.

(d) A permit shall not be required for maintenance and repair of an existing dock, wharf or mooring if such repairs do not alter the size or shape of the dock or wharf. All repairs must conform to the requirements of this Subpart.

(e) Any change in use of an existing marina which increases the number and/or types of vessels serviced shall require a modification to any previously is-sued permit.

(f) Prior to the issuance of any permit which involves the commercial use of a dock, wharf or mooring, or the registration of any such facility, the commission shall require the applicant to certify that the facilities and associated land uses are in compliance with applicable provisions of state and local laws, ordinances, rules and regulations.

(g) No person shall clean any vessel with chemicals or detergents where runoff into or contamination of the waters of the park is likely to occur.

(h) No person shall launch a vessel into or remove a vessel from the waters of the park without inspecting the vessel and its trailer, if any, to ensure the detection of marine growth, including macrophytes (weeds), or any other hull contamination, and removing said growth and disposing of it so as to ensure that it is not discharged into the waters of the park.

(i) No person shall launch any vessel into the waters of the park, or operate a vessel on the waters of the park, which is not permanently sealed to prevent the discharge of wastewater into the waters of the park.

(j) No permit shall be issued under §§646-1.1 and 646-1.2 of this Subpart, and no facility shall be registered under § 646-1.3 of this Subpart unless the applicant demonstrates that the requirements of those sections have been complied with. If, during the life of the registration or permit the dock, wharf or mooring, or marina, ceases to meet the requirements of this Subpart, the registration or permit shall be subject to immediate revocation and the owner or operator shall be subject to the imposition of a fine for each day until the violation is corrected.

(k) No vessel shall be berthed at a dock, wharf or mooring without the prior consent of the adjoining landowner so as to encroach beyond the adjacent property line extended into the lake on the same axis as the property line runs onshore where it meets the lake, or at a right angle to the mean high-water mark, whichever results in the lesser setback.

(l) No person shall operate or put to use a commercial dock, wharf, mooring, Class A marina or Class B marina without implementing a maintenance pro-gram sufficient to keep all docks, wharves, adjacent shoreline, water and lake bottom clean of debris.

(m)The construction of a dock, wharf or mooring may also require a permit from other agencies,

including the following: the department; the U.S. Army Corps of Engineers; in certain locations, a wetlands permit or a land use permit from the APA; and/or municipal zoning approval.

6 NYCRR 646-1.7
SUBPART 646-1. DOCKS, WHARFS, MOORINGS AND MARINAS

Section 646-1.7 Exemptions.

The permit application requirements of this Subpart shall not be applicable to the State, including agencies of the State, or any municipality acting in a governmental capacity.

NEW YORK STATE LAW
ENVIRONMENTAL CONSERVATION LAW

§ 71-3303. Civil and administrative sanctions.

1. Any person who violates any provision of, or fails to perform any duty imposed by article 43 of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the Lake George park com-mission made pursuant to article 43 of this chapter shall be liable for a civil penalty not to exceed $500 dollars for each such violation and an additional penalty of $500 dollars for each day during which such violation continues, to be assessed by the Lake George park commission after an opportunity to be heard, or by the court in any action or proceeding initiated by the attorney general in the name of the Lake George park commission. In addition thereto, such person may, by similar process, be enjoined from continuing such violation, and any permit or certificate issued to such person may be revoked or suspended, or a pending renewal application denied based upon such violation.

2. Such civil penalty may be released or compromised by the Lake George park commission before the matter has been referred to the attorney general; and, where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and

discontinued by the attorney general with the consent of the Lake George park commission.

§ 71-3305. Administrative Procedures.

1. In any proceeding initiated by the Lake George park commission pursuant to this title, the commission or any person designated by the commission for this purpose, may issue subpoenas and administer oaths in connection with any hearing or investigation under or pursuant to the provisions of this chapter, and it shall be the duty of the Lake George park commission and any persons designated by it for such purpose to issue such subpoenas at the request of and on behalf of any respondent.

2. The Lake George park commission and those persons designated by it shall not be bound by the laws of evidence in the conduct of hearing proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

3. All proceedings where the administrative penalties sought by the Lake George park commission exceeds $5,000 dollars, shall be referred to the commissioner for processing in accordance with the procedures specified in §71-1709 of this chapter, except that, following the processing of such proceedings, the Lake George park commission shall make appropriate determinations and issue an order in accordance therewith in lieu of such action by the commissioner. All proceedings where the

administrative penalties sought are less than or equal to $5,000 dollars, may either be referred to the commissioner as provided herein, or the Lake George park commission may appoint a hearing officer who must be an attorney admitted to practice law in the state of New York, who shall preside over such hearing and report to the Lake George park commission regarding the hearing. The commission shall establish by rules and regulations regarding qualifications of such hearing officers and appointment procedures, including per diem fees not to exceed $250 dollars.

§ 71-3307. Criminal sanctions.

Any person who, having any of the culpable mental states defined in §15.05 of the penal law, shall violate any of the provisions of or who fails to perform any duty imposed by article 43 of this chapter or any rules or regulations promulgated thereto, or any fin-al determination or order of the Lake George park commission shall be guilty of a violation, and, upon conviction thereof, shall be punished by a fine not to exceed $500 dollars for each violation and $500 dollars for each day such violation shall continue.

UNITED STATES CONSTITUTION PROVISIONS

United States Constitution Article I §10:

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or ex-ports, except what may be absolutely necessary for executing it's inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

§ 453. Oaths of Justices and Judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: ``I, XXX XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as XXX under the Constitution and laws of the United States. So help me God."

28 U.S.C. § 1257. State Courts; *Certiorari*

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of *certiorari* where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State: includes the District of Columbia Court of Appeals.

RESOLUTION NO. 98-69
LAKE GEROGE PARK COMMISSION
SEPTEMBER 29, 1998

In the Matter of the Application of
DUNHAM'S BAY RESORT CORP., INC.
for a Class A Marina Permit

WHEREAS, the Lake George Park Commission Regulations at 6 NYCRR Parts 645 and 646 establish requirements for the construction and operation of marinas and operation of certain recreational uses on Lake George; and

WHREAS, Section 646-1.2 establishes that no person shall construct, expand or operate a Class A marina servicing the waters of Lake George or alter or expand the number or types of services or recreational activities offered without obtaining a permit from the Commission, or if a permit has been issued for the subject facility, a modification to the permit for that facility which authorizes the new or expanded services or recreational uses; and

WHEREAS. In 1982, under the predecessor regulations, the New York State Department of Environmental Conservation ("NYSDEC") issued a marina permit for the subject facility which is located on Dunham's Bay in the Town of Queensbury, County of Warren; and

WHEREAS, after receiving notice from the Commission of the requirements of the aforesaid regulations contained in 6 NYCRR Parts 645 and 646, Dunham's Bay Resort Corp., Inc. ("Dunham's

Bay") applied to the Commission for a Class A marina permit on or about May 13, 1997; and

WHEREAS, the Class A marina permit application was reviewed in accordance with the 6 NYCRR Section 645-s and was the subject of public notice and extensive and thorough review by the Commission; and

WHEREAS, by letter dated September 23, 1998, Dunham's Bay withdrew the aforesaid Class A marina application; and

WHEREAS, the applicant through his attorneys has indicated in the letter of September 23, 1998 and verbally at the Project Review Committee Meeting on September 23, 1998 that Dunham's Bay will submit a new application for a Class A marina permit; and

WHEREAS, upon information and belief, the subject facility will continue to be operated as a Class A marina without having received a Class A marina permit from the Commission and the letter of September 23, 1998 does not indicate an intent to cease operations or reduce the level of activity at the subject facility to that which was approved in the aforesaid NYSDEC permit,

WHREAS, the record before the Commission for the Class A marina permit application establishes that the subject facility offered PWC rental beginning in 1997 and this is not an activity which was authorized by the NYSDEC marina permit, and

WHREAS, the existing wharf registration establishes that the permitted length of the wharfs at the subject premises is 24 feet for each wharf; however, since the date of issuance of the wharf

registration, the wharfs have been extended to 30 feet in length and in some instance have been extended more than 30 feet in length, and

WHEREAS, Dunham's Bay had not applied for or received a permit to extend the wharfs as is required by 6 NYCRR Section 646-1.1

NOW, THEREFORE, BE IT RESOLVED, that the Commission acknowledges that the Class A marina permit application has been withdrawn, and be it further

RESOLVED, that the withdrawal of the Class A marina permit application does not negate the Commission's jurisdiction over the subject facility pursuant to Environmental Conservation Law, Section 43-0101 et seq.; Chapter 617 of the laws of 1987 effective January 1, 1988 and the implementing regulations of the Lake George Park Commission at 6 NYCRR Parts 645 and 646, and be it further

RESOLVED, that as the Commission's regulations at 6 NYCRR 646 1.2 prohibit the operation of a Class A marina without a permit from the Commission, the Commission finds that the continued operation of the subject facility without a Class A marina permit form the Commission is a violation of Commission regulation, and be it further

RESOLVED, that the Commission finds that the NYSDEC marina permit for the subject facility was superseded by the enactment of the Commission's regulations applicable to Class A marinas on June 3, 1988, and be it further

RESOLVED, that the Commission acknowledges that the NYSDEC permit may be

utilized to establish a baseline level of marina activity offered at the subject facility which would for the basis of a Class A marina permit from the Commission; however, the offering of PWC rental at the subject facility constitutes an expansion of the subject facility and requires a permit form the Commission pursuant to Section 646-1.2 of the Commission's regulations; and be if further

RESOLVED, that the operation of PWC rental at the subject facility without the necessary permit constitutes a violation of the Commission's regulations; and be it further

RESOLVED, that as the wharfs at the subject premises have been extended and/or modified without a permit, the wharfs are maintained in violation of the permit requirements and design standards of 6 NYCRR Part 646; and be it further

RESOLVED, that the Commission refers the matter of the aforesaid violations of the Commission regulations to the Office of the New York State Attorney General.

MOTION: Burleigh	SECOND: Stewart
AYES	NAYS	ABSTENTIONS
7	0	0

9/29/98

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

LAKE GEORGE PARK COMMISSION,
Plaintiff,

-vs-

DECISION
Index
#37573

JOHN SALVADOR, JR., and KATHLEEN A. SALVADOR, Individually and as the Owners, Officers and Managers of DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC., d/b/a DUNHAM'S BAY BOAT and BEACH CLUB, INC., DUNHAM'S RESORT CORP., d/b/a DUNHAM'S BAY LODGE, INC., and/or DUNHAM'S BAY BOAT AND BEACH CLUB, INC., and WILLIAM ROBINSON, Individual and d/b/a LAKESIDE BOAT RENATLS.
Defendants.

The parties in the above entitled matter have been participants in numerous lawsuits involving the defendants' property and/or business which are situate on the shores of Lake George in Warren County, New York. A portion of the litigation has proceeded through the Federal Court System and other portions of the litigation have proceeded through the State Court system. In the above entitled action, there have been numerous motions which have been made but not decided due to the fact that there was litigation in the Federal system and that the parties were trying to negotiate a resolution of their disputes. The Court

has now been advised by the parties that the Federal litigation is completed and that all sides would like a Decision on the motions previously made.

The Court will begin with the defendants' motion to dismiss/summary judgment and the plaintiff's cross motion for summary judgment. The plaintiff commenced this action on December 28, 1998. On May 26, 2000, Judge Moynihan granted plaintiff's application to serve an "Amended Supplemental Complaint". The amended complaint contains ten separate causes of action. In the complaint, the plaintiff seeks:(1) injunctive relief compelling the defendants to reinstate their application to the plaintiff for a Class "A" marina permit; (2)injunctive relief enjoining the defendant from renting or allowing the rental of personal water craft from the defendants' marina; (3)injunctive relief enjoining the defendants from utilizing any portion of their 30 foot finger docks until they remove the six foot extension docks or until they receive a permit from the plaintiff authorizing the six foot extension; (4)injunctive relief prohibiting the defendants from constructing their proposed boat ramp until and unless the defendants obtain a permit from the plaintiff authorizing the construction of the ramp; (5)the plaintiff seeks various fines, penalties and interest awards for the alleged violations committed by the defendants.

The defendants, John Salvador, Jr., and Kathleen A. Salvadors are the owners of certain lands which comprise the Dunham's Bay Lodge. The property consists of multiple amenities and has

various uses. For the purpose of this Decision, it will be simply referred to as the defendants' marina. The defendant, William Robinson, is alleged by the plaintiff to have operated a het ski rental business out of the defendants' marina property.

The plaintiff has commenced this action dud to the defendants' alleged failure to comply with the pertinent provisions of Article 43 of the New York State Environmental Conservation law and the plaintiff's implementing regulations which are set forth in Title 6, Chapter IX of the Official Compilation of the New York's Codes, Rules and Regulations.

The Court initially notes that the plaintiff has asked this Court to treat the defendants' motion to dismiss as a motion for summary judgment pursuant to CPLR §3211(c). The defendants' motion papers specifically refer to summary judgment as a form of relief being sought by the defendants. In light of the parties' conduct in charting a summary judgment course, the Court will treat the defendants' motion to dismiss as a motion for summary judgment.

The defendants' motion papers make various references to Judge Moynihan's Order of May 5, 2000, which granted the plaintiff the right to serve an amended complaint. The defendants assert that this relief was improperly granted, thus the Court should either grant the present motion of the defendants to dismiss or, in the alternative, the Court should deny the plaintiff's cross motion for summary judgment. If the defendants were aggrieved by Judge Moynihan's Order permitting

the plaintiff to amend the complaint, then the defendants should have appealed that decision. Having failed to do so, they cannot now claim that this is a valid basis to defeat the causes of action which are set forth in the plaintiff's amended complaint.

The next central argument which permeates many of the issues presently before the court is the defendants' claim that the permit which was issued by the New York State Department of Environmental Conservation was responsible for overseeing marinas on Lake George. In November of 1981, the defendants applied to the Department of Environmental Conservation for a permit to operate a marina on Lake George. At the same time, the defendants also registered their docks with the Department of Environmental Conservation. The defendants' docks were depicted as being 24 feet in length at that time. In March of 1982, the defendants received their Marina Permit from the Department of Environmental Conservation.

In 1987, various amendments occurred within the New York State Environmental Conservation law which transferred the regulatory authority of marinas from the Department of Environmental Conservation to the newly created agency of the Lake George Park Commission. The plaintiff asserts that during the transition period, it continued to recognize the former Department of Environmental Conservation permits until such time as the marinas were notified of the changes in the new regulating scheme. In 1996, the defendants were advised that they had to obtain a

marina permit from the Commission. In 1997, the defendants began the application process. In September of 1998, the defendants withdrew their application and reasserted their claim that the previously issued Department of Environmental Conservation permit (3/22/82) was irrevocable and continued to govern the defendants' marina operations. The above entitled action was thereafter commenced.

The Court finds that the defendants' claim that the previously issued Department of Environmental Conservation permit continues to govern its marina is completely without merit.

ECL §43-0117(4) states, in part:

"... the commission shall, consistent with the purposes of this article, promulgate regulations relative to the permitting of boats, the registration and regulation of docks, wharfs and mooring, the regulation of marinas, the limits of speed and sound on Lake George, the regulation of recreational activities such as regatta-type events, water skiing, parasailing and other similar activities, and the regulation of tour boats, boat rentals and other rental activities. Following the promulgation of such regulations: (a) no person shall construct any dock, wharf, mooring, marina or put any such structure to use without first obtaining a permit from the Commission, and (b) no person shall operate any boat or vessel, or undertake any regulated activity without complying with such regulations and obtaining a permit from the Commission, if

> required. [end quotation marks omitted in original]

The Court also noted that 6 NYCRR 646-1.2 contains explicit regulations concerning permits and Class "A" marinas. The regulation specifically states that a Class "A" marina may not operate without obtaining a permit from the Lake George Park Commission.

In one final point, the Court additionally notes that the very permit which the defendants rely upon (DEC 3/22/82) specifically states at paragraph "2":

> "Granting of this permit does not relieve the permittee of the responsibility of obtaining any other permission, consent or approval which may be required for this marina.".

In light of the foregoing, this Court finds that the defendants' marina property is subject to the pertinent provisions of Article 43 of the New York State Environmental Conservation Law and the regulations promulgated thereunder. The Court will now address the various causes of action set forth in plaintiff's amended supplemental complaint dated June 19, 2000.

Plaintiff's first cause of action seeks injunctive relief compelling the defendants to reinstate their application to the plaintiff for a Class "A" marina permit and an Order restraining the defendants from exceeding the level of uses that existed at the marina as of June 3, 1998. The Court will deny defendant's motion to dismiss and will grant the plaintiff's cross motion for summary judgment on this cause of action.

Plaintiff's second cause of actions seeks civil penalties for continued operation of the defendants; marina without a Class "A" marina permit. The Court will deny defendants' motion to dismiss. The Court will grant the plaintiff's cross motion and the Court will schedule a hearing for the purpose of determining the amount of civil penalties.

Plaintiff's third cause of action seeks injunctive relief enjoining the defendants from renting or allowing the rental of personal water craft from the defendants' marina until such time as the defendants obtain a permit from the Lake George Park Commission authorizing such uses. The Court will deny the defendants' motion to dismiss this cause of action and will grant the plaintiff's cross motion for summary judgment.

Plaintiff's fourth cause of action seeks civil penalties for the period of time that the defendants allowed rentals of personal water craft without a permit. The court will deny the defendants' motion to dismiss and the court will grant the plaintiff's summary judgment motion and will schedule a hearing for the purpose of determining the amount of civil penalties.

Plaintiff's fifth cause of action seeks injunctive relief enforcing prior Orders of the Court which required the removal of the six foot extensions which the defendants had added to their 25 finger docks without first obtaining a permit. The Court will deny the defendants' motion to dismiss and will grant the plaintiff's cross motion for summary judgment.

Plaintiff's sixth cause of action seeks civil penalties for the defendants' maintenance of the

unpermitted six foot extensions of their 25 finger docks. The Court will deny defendants' motion to dismiss and grant the plaintiff's cross motion for summary judgment. The Court will schedule a hearing for the purpose determining the amount of civil penalties.

Plaintiff's seventh cause of action seeks injunctive relief enjoining the defendants from undertaking any further construction efforts on the boat ramp until such time as a valid permit is issued by the Commission authorizing the ramp. The plaintiff further seeks an Order which would require the removal of the ramp if it has already been constructed or partially constructed. The Court will deny the defendants' motion to dismiss and will grant the plaintiff's cross motion for summary judgment.

Plaintiff's eighth cause of action seeks civil penalties with respect to the ramp. The Court will deny Defendants' motion to dismiss. The Court will schedule a hearing to determine the amount of civil penalties, if any.

Plaintiff's ninth and tenth causes of action seek civil penalties concerning the defendants' alleged failure to pay the regulating fees in a proper and timely manner. The Court will deny the defendants' motion to dismiss and the Court will schedule a hearing on this item of damage to determine the amount of civil penalty, if any.

The Court also notes for the record that the plaintiff's motion to quash certain subpoenas which were requested in connection with a hearing on plaintiff's Temporary Restraining Order is now moot. The plaintiff has received summary

judgment on the merits and there is no longer a need to conduct a hearing in connection with the Temporary Restraining Order which was previously issued by the Court.

Plaintiff to submit a proposed Order on notice to defendants.

This writing constitutes the Decision of the Court.

Signed this 19th day of July, 2004, at Gloversville, New York.

/s/
HON. RICHARD T. AULISI
Justice of the Supreme Court

ENTER

Permit No. 50-81-0071 MA

New York State Department of Environmental Conservation
Hudson Street Ext., Warrensburg, N.Y. 12885

MARINA PERMIT
Article 9, Title 1 ECL (6 NYCRR Part 646)

PERMIT ISSUED TO
Dunham's Bay Lodge

ADDRESS OF PERMITTEE
RD #1, Box 111A, Lake George, NY 12845

LOCATION OF MARINA
Dunham's Bay

DESCRIPTION OF MARINA
Sale or rental of marine products, services and dock space
for 67 boats.

TOWN	COUNTY	VILLAGE
Queensbury	Warren	

GENERAL CONDITIONS

1. The marina shall be subject to inspection by authorized representatives of the Department of Environmental Conservation.
2. Granting of this permit does not relieve the permittee of the responsibility of obtaining any other permission, consent or approval which may be required for this marina.

3. By acceptance of this permit the permittee agrees that the permit is contingent upon strict compliance with all conditions included herein.
4. Rest room facilities shall be available to customers whenever the marina is open.
5. Trash disposal receptacles shall be provide and maintained during operation.
6. The shoreline and adjacent waters of Lake George shall be maintained in a clean condition.
7. Parking for __75__ customer vehicles shall be provided and maintained on the marina site or at an adjacent off-street site in accordance with a lease or other contractual agreement.
8. Any increase in the number of vessels accommodated or increase in the scope of operation shall require an amendment of this permit.
9. The applicant has accepted and expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the State form suits, actions, damages and costs of every name and description resulting from the said project.

PERMIT ADMINISTRATOR PERMIT
ISSUE DATE
/s/ Richard A. Wild
March 22, 1982

OFFICIAL DOCK SURVEY REPORT

DATE: 6/24/88
LAKE LEVEL: _____
WATER DEPTH: 12"
SURVEYORS: Tracey Clothier, John Salvadore [*sic.*]

NAME OF FACILITY: Dunhams Bay Lodge
TYPE OF FACILITY: __X__ Commercial ___ Residential ___ Association
LOCATION: Town of Queesnbury – Dunhams Bay
PARCEL ID NO.: _____ DEC PERMIT NO.: 50.-8.1-0071 Marina
NAME OF OWNER: John Salvadore [*sic.*]
CONTACT PERSON: Same
MAILING ADDRESS: _____
PHONE NUMBER: (518) 656-9242

DESCRIPTION OF FACILITY:
LAUCH __√__ NONE ____ CUSTOMER USE ONLY ___ PUBLIC LAUNCH____
GAS DOCKS: ___ NONE __1__ NUMBER OF PUMPS
BOAT SLIP RENTAL: __60__ TOTAL NUMBER OF SLIPS
__1__ TOTAL NUMBER OF MOORINGS
(PRIVATE)
BOAT STORAGE: __12__ TOTAL NUMBER
QUICK LAUNCH FACILITIES: ____ YES __√__ NO
BOAT RENTALS: __√__ YES ____ NO ____ NUMBER ROWBOATS TYPES

CANOES

OTHER SERVICES: 24 hour restrooms
Pumpout Facilities Planned

1988

LAKE GEORGE PARK COMMISSION AGREEMENT FIXING COMMERCIAL DOCK FEES

WHEREAS, Article 43 of the Environmental Conservation Law requires the owner of a commercial dock on Lake George to pay an annual fee of $2.50 per linear foot of commercial dock to the Lake George Park Trust Fund which is administered by the Lake George Park Commission ("the Commission"), now therefore it is

AGREED by the Commission and the undersigned owner/operator of the commercial dock facilities described below, that 1021 feet of commercial dock at said facility are subject to such fees and further that the appropriate annual fee for such dock(s) is $2552.50 ($2.50 x 1021 linear feet) and further that said amount will be remitted to the Commission by the undersigned owner/operator by check or money order no later than the first day of June 1988, and on or before April 1 of each year thereafter.

This agreement may be rescinded by the Commission at any time if it is determined by the Commission that the amount of the linear footage of commercial dock specified herein is not accurate. In the event of rescission of [*sic.*] the Commission, the Commission shall set the new fee. Said fee shall not take effect until 30 days from the date notice thereof is mailed to the owner/operator. The owner/operator may make request for re-

determination of said new fee pursuant to the regulations of the Commission.

The commercial dock(s) subject to this agreement is described as follows:

Dunham's Bay Lodge

Owner: John Salvadore [*sic.*]

Location: Dunham's Bay

Town/Village: Queensbury

Tax Map No. _____

Date: 7-25-88

LAKE GEORGE PARK COMMISSION

By: /s/ Tracey M. Clothier John Salvadore [*sic.*]

Name

Owner/Operator

By: _____ By: /s/ John Salvador, Jr.

Name Name

Title Title